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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

BENNIE WILLIE DIXON, JR.,

Defendant and Appellant.

D073336

(Super. Ct. No. SCD268794)

APPEAL from a judgment of the Superior Court of San Diego County, Robert F. O'Neill, Judge. Affirmed.

Charles R. Khoury Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Paige B. Hazard and Steve Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Bennie Willie Dixon, Jr. caused a fracas in downtown San Diego, snatching a chair from a coffee shop and sitting in it in the middle of the road and then in

the middle of the trolley tracks. He was charged with multiple counts of resisting and threatening executive officers, making a criminal threat, assault with a deadly weapon, and petty theft. With prior strike and serious convictions, he faced a sentence of over 100 years to life.

Dixon represented himself at trial. The jury acquitted him of the two charges that qualified as serious felonies for enhanced punishment, making a criminal threat and assault with a deadly weapon. The court sentenced Dixon to a total term of 16 months, less than the amount of his pretrial custody credits. He was released from custody with his sentence fully served.

Dixon now wants a retrial, claiming that there is insufficient evidence to support the court's determination that he was competent to stand trial and to represent himself. He also challenges the procedure used to evaluate his competency. We reject his contentions and affirm the judgment.

BACKGROUND

On the morning of September 21, 2016, Dixon was loud and belligerent at a coffee shop in downtown San Diego. He took a chair from the patio outside the coffee shop, placed it in the street median and later in the middle of the trolley tracks. He sat in the chair for a while, then teased the coffee shop employees by moving away from the chair but running back to sit in it right before the employees were able to retrieve it.

A security guard tried to persuade Dixon to return the chair. As she approached, Dixon lifted the chair up and held it over his head, threatening to throw it at her. He angrily yelled at her to get away. The security guard's call to 911 was played for the jury.

The guard said she had seen Dixon drinking earlier that day and thought he was under the influence.

San Diego Police Officers Carlos Navarro and Edgar Melendez arrived at the scene. They talked calmly with Dixon and asked if he needed any help. They persuaded Dixon to move to the sidewalk. At the time, Dixon was bothered by an imaginary dog. Officer Navarro pretended to kick the dog away. Without warning or provocation, Dixon punched Officer Melendez in the face. Officer Navarro put Dixon face-down on the ground and handcuffed him. Dixon thrashed and resisted throughout. Officer Mallory Maraschiello and a sergeant arrived and assisted in subduing Dixon. Videos from the officers' body cameras were played for the jury.

Officer Maraschiello arrested Dixon and took him to the hospital for a medical check. Once there, Dixon told her he wanted to kill her by slicing her face with a razor blade. Dixon also threatened Detective Michelle Hansen that she "would not see tomorrow" and that he would "rip [her] ass apart."

Dixon was charged with resisting an executive officer, Officer Melendez (count 1, Pen. Code, § 69),¹ two counts of threatening a public officer, Detective Hansen (count 2, § 71) and Officer Maraschiello (count 3, § 71), making a criminal threat to Officer Maraschiello (count 4, § 422), assault with a deadly weapon on the security guard (count 5, § 245, subd. (a)(1)), and petty theft (count 6, § 484, subd. (a)). It was alleged that Dixon had two serious prior felony convictions (§ 667, subd. (a)) that were also strike

¹ Further statutory references are to the Penal Code unless otherwise noted.

convictions (§§ 667, subds. (b)-(i) & 1170.12). Allegations of causing great bodily injury in connection with count 1 and personally using a deadly and dangerous weapon with respect to count 4 were stricken by interlineation.

The jury found defendant guilty of resisting an executive officer, Officer Melendez (count 1), threatening a public officer, Detective Hansen (count 2), assault on the security guard (lesser included offense of count 5, assault with a deadly weapon), and petty theft (count 6). It found Dixon not guilty of threatening Officer Maraschiello, a public officer (count 3) or of making a criminal threat to her (count 4). Thus, it acquitted Dixon of the two serious felonies pending against him, making criminal threats and assault with a deadly weapon.² In a bifurcated proceeding, the jury found true the allegations that Dixon had two prior serious or violent convictions. The acquittal on the serious felonies, however, precluded imposition of the five-year enhancements for his prior serious felony convictions (see § 667, subd. (a)(1)) and reduced the third strike punishment from a life sentence to twice the punishment on the principal conviction (see § 667, subd. (e)(2)(C)).

On January 5, 2018, the court denied a new defense counsel's motion for new trial. In the motion for new trial, Counsel said that Dixon's family in Georgia "desperately . . .

² Making a criminal threat is defined as a serious felony under section 1192.7, subdivision (c)(38), for purposes of prior conviction enhancements. Assault with a deadly weapon is a serious felony under that section if the defendant personally inflicts great bodily injury (*Id.* at subd. (c)(8)), personally used a dangerous or deadly weapon (*Id.* at subd. (c)(23)), or in certain specific instances not at issue here (see, e.g., *id.* at subds. (c)(11) [assault on a peace officer], (c)(31) [assault with firearm]). Dixon was acquitted of assault with a deadly weapon and convicted of misdemeanor assault.

tried to get [Dixon] off the streets and home to Georgia," because he was mentally ill when he did not take his medication. The trial court fashioned a sentence to accomplish that by striking the prior strike convictions and imposing the lowest term possible, 16 months, so that the prison term was satisfied by Dixon's pretrial custody credits. Dixon was released without any holds, with an arrangement for him to fly back to his family in Georgia as soon as he was released.

DISCUSSION

1. Substantial Evidence Supported the Trial Court's Pretrial Finding that Dixon Was Competent to Stand Trial

Dixon contends that he was not competent to stand trial, but the trial court found to the contrary, based on the report of a forensic psychologist. Substantial evidence supports the finding that Dixon understood the nature of the proceedings and was able to assist with and conduct a defense. The court did not abuse its discretion.

a. Background

At the first appearance after arraignment, defense counsel informed the court that Dixon wanted to represent himself at trial. Dixon said he had represented himself 16 or 17 times before. The court questioned his level of knowledge and advised him of the dangers and disadvantages of self-representation. Defense counsel informed the court that Dixon had seen imaginary dogs during the incident. Defense counsel thought Dixon was presently competent to stand trial, but that he might become incompetent at a future time. Dixon also told the court that aliens were present in the courtroom. The trial court questioned Dixon's mental competency to stand trial and to represent himself due to these

delusions. The court referred Dixon to a forensic psychologist for an evaluation of Dixon's competence to stand trial and his competence to represent himself.

Valerie Rice, a staff forensic psychologist for the County of San Diego, interviewed Dixon and reviewed some of his prior records. Dr. Rice reported that Dixon had a history of severe alcohol use disorder and antisocial personality disorder. She found that Dixon had "an excellent understanding of the nature of the criminal proceedings." However, she found it highly likely that he would be "challenging to work with," and could be disruptive and belligerent in court. This was attributable to his antisocial personality traits. She made no specific findings on Dixon's competence to represent himself. Defense counsel submitted on Dr. Rice's qualifications and report. Accordingly, on January 27, 2017, the court found Dixon competent to stand trial and reinstated criminal proceedings.

b. Legal Principles

"Both the due process clause of the Fourteenth Amendment to the United States Constitution and state law prohibit the state from trying or convicting a criminal defendant while he or she is mentally incompetent." (*People v. Rogers* (2006) 39 Cal.4th 826, 846; *Drope v. Missouri* (1975) 420 U.S. 162, 181.) Section 1367, subdivision (a), incorporates this constitutional standard, defining a mentally incompetent person as one who "is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner." (§ 1367, subd. (a); *People v. Rodas* (2018) 6 Cal.5th 219, 230–231 (*Rodas*); *In re Sims* (2018) 27 Cal.App.5th 195, 208 (*Sims*).) A defendant is mentally incompetent to stand trial if he lacks a "sufficient

present ability to consult with his lawyer with a reasonable degree of rational understanding — [or lacks] . . . a rational as well as a factual understanding of the proceedings against him.' [Citation.]" (*Dusky v. United States* (1960) 362 U.S. 402, 402 (*Dusky*)). Evidence of incompetency must be substantial, that is, evidence that raises a reasonable doubt about the defendant's ability to stand trial. (*Rodas*, at p. 231; *Sims*, at p. 208.)

A defendant is presumed mentally competent unless he proves otherwise by a preponderance of the evidence. (§ 1369, subd. (f); *People v. Blacksher* (2011) 52 Cal.4th 769, 797 (*Blacksher*); *People v. Lawley* (2002) 27 Cal.4th 102, 131 (*Lawley*)). Our review of the trial court's determination of competency is deferential because the trial court had the opportunity to observe the defendant through the course of the proceedings. The decision is fact-specific to the defendant. (*People v. Shiga* (2016) 6 Cal.App.5th 22, 43 (*Shiga*); *In re R.V.* (2015) 61 Cal.4th 181, 198.) We uphold the trial court's decision if supported by substantial evidence and we review the record in the light most favorable to the ruling. (*People v. Mendoza* (2016) 62 Cal.4th 856, 871 (*Mendoza*); *People v. Johnson* (2012) 53 Cal.4th 519, 531 (*Johnson*)). "Our review is limited to the evidence presented at the competency trial." (*Mendoza*, at pp. 871–872.) The testimony of one expert is sufficient to provide substantial evidence of competence or incompetence. (*Id.* at p. 878.)

c. Analysis

Dixon contends that the trial court abused its discretion in finding him competent to stand trial, claiming he was delusionally obsessed with the belief that his case should

have been dismissed due to the manner of arraignment,³ he exhibited psychotic delusions at the hearing on October 7, 2016, and Dr. Rice did not consider a prior report that found he was schizophrenic. This prior report was not in the record at the time of the competency finding, so we do not consider it in reviewing the trial court's pretrial determination. (*Mendoza, supra*, 62 Cal.4th at pp. 871–872.) Dixon submitted the report on his diagnosis of schizophrenia with his motion for new trial. We thus consider it in connection with our review of the new-trial ruling, *post*. (*Ibid.*)

Dixon also alleges that Dr. Rice did not state that he was competent to stand trial because she concluded that "the Court *may* find him competent to stand trial." Dr. Rice, however, stated that Dixon demonstrated "an excellent understanding of the nature of the criminal proceedings and, at least for part of my evaluation, was able to participate in the interview in a calm and rational manner." This finding that Dixon understood the nature of the criminal proceedings and could communicate in a calm and rational manner satisfied the requirement for competency to stand trial. (§ 1367, subd. (a); *Dusky, supra*, 362 U.S. at p. 402; *Sims, supra*, 27 Cal.App.5th at p. 208.)

As to Dixon's remaining contentions, he has not shown how his occasional delusions and obsession with his arraignment affected his competence at this trial. He contends that he could not assist counsel at trial because the arraignment was all that he

³ Dixon claimed that he was never arraigned on the complaint or that he was not in the courtroom for the arraignment, but both the transcript of the arraignment and the court minute order show that Dixon was present and arraigned on September 28, 2016. Also, he was present at his arraignment on the information on February 27, 2017, and represented himself at that proceeding.

wanted to discuss. That is not sufficient. (See *Lawley, supra*, 27 Cal.4th at pp. 134–135 [defendant was competent to defend himself in capital case even though he was fixated on court trial instead of jury trial, based in part on his paranoid beliefs].) Counsel did not indicate an inability to communicate with Dixon. At the hearing when the trial court questioned Dixon's competency, defense counsel stated that in his opinion, Dixon was competent to stand trial. That opinion necessarily includes an acknowledgement that Dixon was able to assist in his defense in a rational manner. Defense counsel never expressed a lack of communication with defendant. In a *Marsden*⁴ hearing on December 21, 2106, before the ruling on competency, counsel did not say that Dixon had any difficulty assisting him, and he expressed no concerns about their communication. We note that Dixon complained about defense counsel's failure to contest the charge due to irregularities at arraignment on the complaint. Defense counsel said that the initial arraignment might be an issue to examine, but that other issues were more pressing.

The court denied Dixon's request for another attorney. The court found, "any deterioration of the relationship between counsel and the defendant has been solely by the defendant's willful recalcitrant defying attitude. There's no reason why in the future the defendant could not be adequately represented by this attorney in this case." Thus, while Dixon contends that his obsession with the arraignment made him unable to assist counsel in a meaningful way, neither defense counsel nor the trial court perceived any such inability. The trial court did not abuse its discretion in finding credible defense

⁴ *People v. Marsden* (1970) 2 Cal.3d 118, 124–125 (*Marsden*) [defendant who requests alternate counsel is entitled to hearing on reasons for request].

counsel's lack of communication problems with Dixon. (See *In re R.V.*, *supra*, 61 Cal.4th at p. 198 [deference to trial court because of its first-hand observations].)

Nor has Dixon explained how delusions at other places and times made him incapable of understanding the criminal proceedings. The last reported delusion was at the hearing on October 7, 2016, when Dixon said there were aliens present in the courtroom. Bizarre statements or actions, alone, do not make a person incompetent to stand trial. (*Sims*, *supra*, 27 Cal.App.5th at p. 209; *People v. Murdoch* (2011) 194 Cal.App.4th 230, 236–237; *People v. Kroeger* (1964) 61 Cal.2d 236, 243–244 (*Kroeger*) [bizarre actions]; *People v. Williams* (1965) 235 Cal.App.2d 389, 398, fn. 3 (*Williams*) [odd statements].) If Dixon expressed delusions at trial that interfered with his understanding, the trial court could have considered that change of circumstances at that time. (*People v. Lightsey* (2012) 54 Cal.4th 668, 690 (*Lightsey*) [even though defendant appeared competent before trial, trial court must reconsider if change in competence during trial]; *Murdoch*, at pp. 234, 237 [trial court was required to reexamine competency during trial because defendant stopped taking medicine and told jury that victim was an angel, not a human].)

The trial court's experience with Dixon and Dr. Rice's forensic psychological report provided sufficient evidence to support the trial court's ruling that Dixon was competent to stand trial. (*Mendoza*, *supra*, 62 Cal.4th at p. 878 [testimony of one expert sufficient].)

2. Substantial Evidence Supported the Trial Court's Finding that Dixon Was Competent to Represent Himself

Dixon also challenges the sufficiency of the evidence that he was competent to represent himself. A defendant is competent to represent himself if he has the ability "to carry out the basic tasks needed to present [one's] own defense without the help of counsel." (*Indiana v. Edwards* (2008) 554 U.S. 164, 175–176 (*Edwards*); *Johnson, supra*, 53 Cal.4th at p. 530.) A defendant who is competent to stand trial is not competent to represent himself if he "suffer[s] from severe mental illness to the point where [he is] not competent to conduct trial proceedings by [himself]." (*Edwards, supra*, 554 U.S. at p. 178; *Johnson*, at p. 530; *Shiga, supra*, 6 Cal.App.5th at pp. 37–39.) Trial courts thus have the discretion to prohibit a defendant from representing himself even if the defendant is competent to stand trial. (*Johnson*, at p. 530.)

The critical question in determining competence for purposes of self-representation is not whether a self-represented defendant meets the standards of an attorney, or whether a defendant is capable of conducting an effective defense, but only whether he can carry out the basic tasks needed to present the defense without the help of counsel. (*People v. Mickel* (2016) 2 Cal.5th 181, 206 (*Mickel*); *People v. Taylor* (2009) 47 Cal.4th 850, 877 (*Taylor*); *Lawley, supra*, 27 Cal.4th at pp. 134–135.) "[T]he likelihood or actuality of a poor performance by a defendant acting in propria persona [does not] defeat the federal self-representation right." (*Taylor*, at p. 866.)

It is true that Dr. Rice did not specifically comment on Dixon's competency to represent himself, as she had been asked to do. Her report, however, along with Dixon's

behavior in court, provided sufficient information for the trial court to determine his competency to represent himself, as well as his competency to stand trial.

Trial judge Polly Shamoon heard Dixon's motion to represent himself on February 6, 2017. Dixon said he "unequivocally and knowingly and intelligently" waived his right to counsel. Judge Shamoon asked Dixon about his education and experience. She warned him that representing himself was unwise, he would waive the right to claim ineffective assistance of counsel on appeal, he would receive no special treatment or assistance from the court, and he had to follow all substantive and procedural rules of law. Dixon said he had represented himself more than 20 times before. He continued to insist that he had not been arraigned, but the trial court told him that was not the issue to be considered at trial and that court records showed that Dixon was present and arraigned on September 28, 2016. This fixation on his arraignment, even if unsupported and unwise, was not cause for denying self-representation. (See *Mickel*, *supra*, 2 Cal.5th at p. 206; *Taylor*, *supra*, 47 Cal.4th at p. 866; *Lawley*, *supra*, 27 Cal.4th at pp. 134–135.) Moreover, Dixon demonstrated his experience representing himself in criminal cases. He said, for example, that he would file a motion for a legal runner and private investigator. He requested to be transferred to the central jail facility "where all pro pers are." He had the knowledge and ability to carry out the basic tasks necessary for defending himself. The trial court granted his motion for self-representation.

A different judge, Judge David Danielson, also questioned Dixon about his self-representation a few weeks later. The court warned Dixon that he was facing a potential term of 180 days plus 111 years to life in prison. Dixon continued to complain about not

having been arraigned. The court asked Dixon to go over the attorney-waiver form. Dixon said he read, understood, initialed, and signed an Acknowledgement Regarding Self-Representation and Waiver of Right to Counsel that explained the dangers and disadvantages of self-representation. Dixon said he still wanted to represent himself. Judge Danielson found that Dixon made a knowing, voluntary, and intelligent waiver of his right to counsel, and granted him the right to represent himself.

On appeal, Dixon picks out selected pieces of the transcripts to suggest that he was not competent to represent himself—his insistence that irregularities at arraignment required dismissal; talking about the imaginary dog at the preliminary hearing and during closing argument; and complaining during closing argument about corruption between the district attorney and the public defender. These comments did not prevent him from carrying out the basic tasks of presenting his own defense. They were not sufficient to permit the court to deprive Dixon of his right to represent himself. (*Johnson, supra*, 53 Cal.4th at p. 530; *Edwards, supra*, 554 U.S. at pp. 175–176; *Mickel, supra*, 2 Cal.5th at pp. 206–207.)

We find no abuse of discretion in granting him the right to represent himself.

3. The Trial Court Did Not Abuse its Discretion in Denying Dixon's Motion for New Trial

After trial, counsel for Dixon filed a motion for new trial, asserting that Dixon was not competent to stand trial and not competent to represent himself. The trial court denied the motion. We conclude that the trial court did not abuse its discretion.

We grant substantial deference to the trial court's ruling as it presided over the trial and saw Dixon's handling of court procedure. (*In re R.V.*, *supra*, 61 Cal.4th at p. 198; *Shiga*, *supra*, 6 Cal.App.5th at p. 43.) We have also fully reviewed the trial proceedings. We agree with the trial court that Dixon was competent to stand trial and to represent himself. His actions at trial showed that he understood the nature of the criminal proceedings and carried out the basic tasks needed to represent himself. (*Johnson*, *supra*, 53 Cal.4th at p. 530.) He did not display the sorts of mental illness symptoms that could preclude self-representation, such as " '[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, [or] anxiety.' [Citation.]" (See *Edwards*, *supra*, 554 U.S. at p. 176.)

At all times, Dixon understood the different stages of examination and cross-examination, recognized the witnesses, understood their testimony and asked questions relevant to their perception of events. A trained attorney may well have handled the defense or questioned the witnesses differently, but the standard is not whether Dixon provided the representation expected of an attorney, but only whether he was able to understand the proceedings and participate in the basic tasks needed to present his defense. (*Mickel*, *supra*, 2 Cal.5th at p. 206; *Taylor*, *supra*, 47 Cal.4th at p. 866.) Moreover, we note Dixon was acquitted of the serious felonies with which he was charged, making a criminal threat and assault with a deadly weapon. He achieved a very favorable result.

Dixon argues that documents submitted in support of his motion for new trial show that he was not competent to represent himself, including a 2015 report from a

psychologist at Atascadero stating he was schizophrenic. The Atascadero report had nothing to do with competence to stand trial and was not based on a personal interview. It concerned Dixon's status as a mentally disordered offender. A diagnosis of schizophrenia does not, alone, make a person incompetent to represent himself. (See *People v. Miranda* (2015) 236 Cal.App.4th 978, 989–990 [defendant with both schizophrenia and bipolar disorder competent to represent himself]; *Lawley, supra*, 27 Cal.4th at pp. 131, 139 [capital defendant with conflicting evidence of paranoid schizophrenia competent to represent himself].)

Dixon also provided a retrospective, posttrial opinion on his competence by forensic psychologist David DeFrancesco. There was no change in circumstances, however, to support a new hearing on competency. (See *Rodas, supra*, 6 Cal.5th at p. 231) Dr. DeFrancesco did not interview Dixon in person. He reviewed the prior reports of Dr. Rice and of the Atascadero psychologist, and very limited, selected parts of the trial transcript. On the single day of trial transcript that he reviewed, Dr. DeFrancesco said that Dixon challenged the honesty of the witnesses, complained about falsified evidence, and expressed a belief that everyone involved lacked honesty. Challenging the evidence against him was the essence of the defense. We have reviewed that trial transcript and conclude that Dixon understood the nature of the proceedings and was able to represent himself. As Dr. Rice had predicted, Dixon was belligerent in court. But his belligerence and suspicion of all around him were due to his personality, not to mental illness.

Dixon's actions in defending himself at trial are a meaningful indicator of his competence. There was no error in the denial of his motion for new trial.

4. *Dixon Forfeited His Claim of Error About a Statutory Violation in Failing to Appoint Two Experts on Competency and Any Error Was Harmless*

Dixon claims in his supplemental brief that the trial court committed prejudicial error by failing to appoint two experts to examine him in accordance with section 1369, subdivision (a)(1). Dixon never objected to appointment of only one expert and he submitted on that single report. He has forfeited his claim. (*Blacksher, supra*, 52 Cal.4th at pp. 797–798.)

The federal Constitution is not implicated here. The constitution mandates no specific procedure for determining competency as long as the procedures are adequate to protect the right not to be tried when incompetent. (*Pate v. Robinson* (1966) U.S. 375, 378; *Taylor, supra*, 47 Cal.4th at p. 861.)

California has set forth its procedures in sections 1367 et seq. Section 1368 requires a hearing if defense counsel informs the court that a defendant is or may be mentally incompetent. (§ 1368, subd. (b).)⁵ When, as here, defense counsel does not declare a doubt as to the defendant's competency, "the court *may* in its discretion hold a hearing to determine the present mental competence of the defendant" (*Shiga*,

⁵ Section 1368, subdivision (b) states: "If counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court *shall* order that the question of the defendant's mental competence is to be determined in a hearing which is held pursuant to Sections 1368.1 and 1369. If counsel informs the court that he or she believes the defendant is mentally competent, the court *may* nevertheless order a hearing." (Emphasis added.)

supra, 6 Cal.App.5th at p. 42; § 1368, subd. (b).) If the trial court questions the competence of the defendant, it must appoint a qualified expert to examine the defendant. (§ 1369, subd. (a).)⁶ If the defendant informs the court that he is not seeking a finding of mental incompetence, the court must appoint two experts, "one named by the defense and one named by the prosecution." (*Ibid.*) The second expert is for the benefit of a defendant who does not want to be found incompetent.

Violation of these procedures does not violate the due process clause. (*Lawley*, 27 Cal.4th at p. 131 [attorney can waive jury for competency hearing because right to jury is statutory, not constitutional]; *People v. Leonard* (2007) 40 Cal.4th 1370, 1391 [failure to appoint director of regional center for developmentally disabled, as required by § 1369, did not violate federal Constitution].) The number of experts required to examine a defendant for competency is not a fundamental right that implicates the entire proceeding. (*Lighsey*, *supra*, 54 Cal.4th at p. 700; *Lawley*, *supra*, 27 Cal.4th at p. 136 [competency hearing procedures not constitutionally mandated]; *Blacksher*, *supra*, 52 Cal.4th at pp. 797–798 [no error when trial court relied on one expert out of three].)

In any event, no prejudicial error occurred. (*Lawley*, *supra*, 27 Cal.4th at pp. 131–135.) We have reviewed Dixon's performance at trial and, like the trial court, find no

⁶ Section 1369, subdivision (a) states: "The court shall appoint . . . [an] expert . . . to examine the defendant. In any case where the defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution."

substantial evidence that Dixon was incompetent to stand trial or to represent himself. Dixon obtained a very favorable verdict, and there is no reasonable likelihood that he would have achieved a more favorable result if he had been represented by counsel.

DISPOSITION

The judgment is affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.